

LEGISLATIVE COUNCIL BRIEF

Public Health and Municipal Services Ordinance (Cap. 132)

HARMFUL SUBSTANCES IN FOOD (AMENDMENT) REGULATION 2008

INTRODUCTION

1. On 22 September 2008, the Director of Food and Environmental Hygiene, in exercise of the power under section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132), made the Harmful Substances in Food (Amendment) Regulation 2008 (“the Amendment Regulation”) at Annex.

BACKGROUND AND JUSTIFICATIONS

2. The Harmful Substances in Food Regulations (Cap 132AF) govern, among other things, the presence of harmful substances in food imported to and sold in Hong Kong.

3. The First Schedule to Cap 132AF stipulates the maximum amount of harmful substances allowed in food. Any person who imports, consigns, delivers, manufactures or sells for human consumption any food containing substances in greater concentration than that stipulated in the First Schedule to Cap 132AF commits an offence. The Director of Food and Environmental Hygiene is the designated authority under section 55(1) of Cap 132 to make and amend Cap 132AF.

Incident of detecting melamine in dairy products

4. Earlier in September 2008, melamine was found in the infant formula produced by the Mainland’s Sanlu brand and there were infants in the Mainland who suffered from kidney stones and kidney failure after consuming Sanlu infant formula. On 16 September 2008, the Mainland

authorities further announced that melamine was detected in the milk powder products of 22 corporations.

5. Melamine is an industrial chemical used for the production of melamine resins, which are used in laminates, glues, adhesives, molding compounds, coatings, paper, textiles, flame retardants or superplastisizer for concrete. Melamine should not be used in food products. It is understood that melamine was added to milk to raise the level of nitrogen present in the product for testing (the level of nitrogen present is higher in protein-rich food product). While melamine has low oral acute toxicity, excessive exposure to melamine has been found to cause bladder stones, crystals in urine and proliferation of epithelial cells of urinary bladder in experimental animals.

6. The Administration has taken a series of measures to effectively tackle the issue. These include conducting tests on dairy products in the market, making announcement on the test results and the latest developments to the public on a daily basis, and maintaining close liaison with the trade, overseas and the Mainland authorities. To tackle the possible medium and long term implications caused by the incident, the Administration has set up an Expert Group to analyze and evaluate various aspects such as health services, treatment and food safety in detail, with a view to formulate corresponding effective measures.

7. The Centre for Food Safety (CFS) is continuously taking samples in the market, and has expanded the scope of the surveillance and testing in a systematic manner. These include the progressive taking of samples to test milk powder, raw/fresh milk, dairy products (e.g. ice-cream, yoghurt) and products with milk powder as ingredient (e.g. cakes, chocolates). While the Mainland products are the main focus of our surveillance strategy, we have also expanded the scope of surveillance to local dairy products, and milk powder for pregnant women and infant formula of different origin.

8. The incident has aroused immense public concern over the safety of milk powder and milk products. Before the introduction of the Amendment Regulation, our legislation governing harmful substances in food, namely Cap 132AF, did not explicitly prohibit the presence of

melamine in food imported, consigned, delivered, manufactured or sold in Hong Kong. Neither did it specify the maximum concentration of melamine allowable in food.

Amendment of Cap 132AF

9. To ensure food safety and protect public health, the Administration has immediately made an Amendment Regulation to amend Cap 132AF to prohibit inappropriate level of melamine in food.

Standard for melamine

10. In setting the standard for melamine under Cap 132AF, we have researched into the international practices and standards and taken into consideration the followings –

- (a) melamine is not a food additive and the addition of melamine into food is not approved by the Food and Agriculture Organisation (FAO)/World Health Organisation (WHO) Codex Alimentarius or by any national authorities;
- (b) traces of melamine may be present in food due to migration of melamine from utensils/ packaging made of melamine-formaldehyde resin;
- (c) melamine can also be an environmental contaminant and small amount may be present as an environmental metabolite of pesticide;
- (d) a Tolerable Daily Intake of 0.63 mg/kg body weight/day for melamine is established by the US Food and Drug Administration; and
- (e) a half-reduced Tolerable Daily Intake of 0.32 mg/kg body weight/day for melamine should be applied to infants and young children of 36 months old or below, as they are more vulnerable to kidney stone formation.

11. Having taken into account all the above factors, we have set the maximum concentration of melamine under Cap 132AF as follows –

Milk Food intended to be consumed principally by persons of an age	1 milligram per kilogram of the food
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group into which children under the age of 36 months fall	
Food intended to be consumed principally by pregnant or lactating women	
Any other food	2.5 milligrams per kilogram of the food

Contravention of the above requirement is subject to a maximum fine of \$50,000 and imprisonment of six months.

12. As at 3 October 2008, the CFS has tested a total of 1371 samples of milk powder and dairy products of which 25 did not meet the legal requirement on melamine set under Cap 132AF, and the detected levels range from 1.4 ppm to 68 ppm. All products concerned have been withdrawn from the market by the importers concerned. The CFS will continue to announce the results of the test on a daily basis so as to keep the public closely informed. All testing results were uploaded to CFS' website for reference by members of the public.

13. Furthermore, as there were concerns from the public on the consumption of milk imported from the Mainland, we have started to conduct test on all consignments of raw milk, pasteurised milk and UHT milk imported from the Mainland to ensure that they meet the legal requirement on melamine in food.

THE AMENDMENT REGULATION

14. The Amendment Regulation has come into operation on the date of gazettal, i.e. 23 September 2008.

LEGISLATIVE TIMETABLE

15. The legislative timetable is as follows –

Publication in the Gazette
Tabling at LegCo

23 September 2008
8 October 2008

IMPLICATIONS OF THE PROPOSAL

16. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the principal Ordinance. It has no financial, civil service, economic, productivity and environmental implications.

17. In line with the sustainability principle of pursuing policies which promote and protect the physical health and safety of the people of Hong Kong, the Amendment Regulation would enhance food safety and help boost public confidence in our food safety regime.

PUBLIC CONSULTATION

18. We briefed the Members and Members-designate of the Legislative Council on 19 September 2008 on the latest development of the melamine incident and our plan to introduce legislation to prohibit food with inappropriate level of melamine. We announced the Amendment Regulation on 22 September 2008 and briefed the Expert Committee on Food Safety and the food trade on the same day.

PUBLICITY

19. A press conference was held on 22 September 2008 to announce the new requirement. A press release was issued on the same day.

ENQUIRIES

20. Any enquiry on this brief can be addressed to Mr James Chan, Assistant Secretary for Food and Health Bureau (Tel: 2973-8241).

**Food and Health Bureau
September 2008**

L.N. 215 of 2008

**HARMFUL SUBSTANCES IN FOOD (AMENDMENT)
REGULATION 2008**

(Made by the Director of Food and Environmental Hygiene under section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Maximum concentration of certain substances present in specified foods

The First Schedule to the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF) is amended by adding—

“26B. Melamine	Milk	1 milligram per kilogram of the food.
	Any food intended to be consumed principally by persons of an age group into which children under the age of 36 months fall	1 milligram per kilogram of the food.
	Any food intended to be consumed principally by pregnant or lactating women	1 milligram per kilogram of the food.

Any other food 2.5 milligrams per kilogram of the food.”.

CHEUK Wing-hing
Director of Food and
Environmental Hygiene

22 September 2008

Explanatory Note

This Regulation amends the First Schedule to the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF). After the amendment, any person who imports, consigns, delivers, manufactures or sells any food containing melamine of a concentration greater than that specified in the Schedule commits an offence.